REMARKS

Status of Claims

Claims 1 – 32 were original in the application. Claims 7, 8, 10, 23, 24, and 26 have been cancelled. Claims 1 – 4, 17 - 22, 25, 27, 29, and 32 have been currently amended. Claims 1 – 6, 9, 11 – 22, 25, and 27 – 32 are submitted for examination on the merits.

Rejection Pursuant to 35 USC 102

Claims 1 - 6, 9, 11 - 16, 17 - 22, 25, and 27 – 32 were rejected as being anticipated by Gershen U.S. Patent 5,801,694.

Regarding claims 1 and 17, the Examiner cited Gershen as disclosing an apparatus and method for delivering user selected files over a distributed network comprising: a server (150, col. 4 lines 52-54) coupled to the distributed network, a client (constituted by 160,165,170,180, 190, fig. 1), a database (110, fig. 1, col. 4 lines 16-36) for storing the plurality of data files communicating with the server (col. 2 lines 60-67, col. 3 lines 1-21), a mixer communicating with the database and server for mixing selected ones of the plurality of data files together, a recorder communicating with the client for recording a user created data track, the client transferring the user created data file to the server, and hence to the database (fig. 4, col. 4 lines 0-67, col. 5 lines 1-20).

The applicant respectfully but strongly disagrees with the Examiner's loose and overbroad interpretation of Gershen, where a CD is called a server, a dedicated stand-

alone processor becomes a mixer and recorder, dedicated inputs like a keyboard or outputs like a monitor become clients. Gershen "mixes" individual tracks of music on a digital device (e.g. computer), but does so for a single user and not as a simultaneous service to an internet or network connected multiplicity of users. A "network" is never mentioned in Gershen. The internet is mentioned only once in passing as a delivery destination for the completed CD which Gershen produces as an end product (col. 4, line 54). There is in truth no server 150 mentioned at col. 4 lines 52 - 54. Element 150 is a CD, not a server. Gershen never mentions a client. The elements referenced by elements 160,165,170,180, 190 in Fig. 1 are a keyboard 160, a mouse 165, a monitor 170 a sound card 180 and speakers 190. There are dedicated input/output devices connected to processor 100 and not separate digital clients being served in a network relationship. The applicant respectfully disagrees with this characterization of Gershen, which does violence to correct understanding of what is a server and a client.

There is no a mixer communicating with the database and server for mixing selected ones of the plurality of data files together, and no recorder communicating with the client for recording a user-created data track. Since there is no separate server and client working together in Gershen to mix music tracks, there is no client transferring the user-created data file to the server and hence to the database. Gershen creates arrangements only from *prerecorded musical works*. There is no provision to allow for recording anything live or in real time from a client, or for recording a track delivered to a server from a remote client (col. 1, line 65 – col. 2, line 15). Gershen works only from fixed musical sequences that collectively make up the musical work, and a template specifying a plurality of fixed sequence positions for arrangements of the musical work.

Each sequence position in the template represents a single track within a multi-track musical arrangement, which may correspond to the performance of one instrumental group or of a musical solo.

Gershen is distinguished from the claimed invention in that Gershen has **NOT** solved the considerable problem of creating a website or Internet based system that is capable of handling the technical and infrastructure concerns of dealing with a network that is able to deliver its product to tens of thousands or even hundreds of thousands of simultaneous users. The claimed invention is based on its ability to handle thousands of concurrent requests from an online audience who all desire to have the music they want, "played their way". Mixing of musical tracks on a singular or personal level has been performed for many years on personal computers and on specifically designed "mixing machines". All of these prior art processes have however one thing in common including the Gershen patent, namely they all assume that "mixing jobs" will be done sequentially. Regardless of how good a job they do in the mixing process, the process generally means that you perform the steps as if one individual is the sole operator or user of the process.

The object of the claimed invention is to electronically bring the art of "music mixing" to the masses and allow them to reap the rewards of their mixes in a matter of seconds. The claimed invention is tantamount to comparing a "fixed stairway" to a "motorized escalator". They both take you from the ground floor of the mall to the second or third floor, but the manner in the way they do it and the convenience to the customer is quite noticeable. This point is illustrated by two embodiments.

The daunting task that is in solved by the claimed invention is one that must be able to take the requests of tens of thousands of users and deliver back to each of them a customized musical composition that pleases them. These users will spend a lot of time experimenting with their selections until they get it "just right". The situation is even more complicated due to the fact that the "ingredients" that make up the final musical mix is totally dependant on the user base. The claimed invention must not only contend with issues under its control but also new issues brought about because for the most part the public will be the supplier of the raw ingredients.

Regarding claims 2 - 6, 9, 11 - 16, 18 - 22, 25, and 27 – 32 the Examiner cited Gershen as further disclosing server that transfers a user selected mixed data file to the client comprised of at least two data files selected by a user from the database (fig. 6 col. 4 lines 40-55), client replays the mixed data file (col. 5 lines 4-5), client stored mixed data file (this step is alleged to be implicit in that the user system outputs mixed data, col. 5 lines 21-39), processing by the server, client, mixer and recorder process comprise: audio data files, music data files, text data files (col. 6 lines 26-38), database includes data fields for categories and subcategories of data files, data files comprises categories and subcategories of music styles (col. 5 lines 56-67, col. 6 lines 1-25), data files stored in the database are characterized as primary track data file or an accompaniment track data file, mixer mixes into a single data file with at least one accompaniment track data file, mixer mixes plurality accompaniment track data files with primary track data files, primary track data file or the accompaniment track data file is user created (col. 3 lines 63-67, col. 4 lines 1-36), creating a text file associated with

a user created data file on a client, transferring the associated text file from the client to a server on the distributed network and to a database communicated with the server, the database having stored therein a plurality of data files each with text files associated therewith, and transferring the mixed plurality of data files from the server to the client via the distributed network with associated text files corresponding to each data file which has been mixed to-gather (col. 6 lines 26-56).

Once again the applicant respectfully but strongly disagrees with the characterization accorded to Gershen, because in no sense understandable by a practitioner in the art does Gershen disclose a server or a client in a network. Even using the Examiner's assignment of elements the rejection makes no sense. The alleged server (CD 150) does not transfer a user selected *mixed data file* to the client (the keyboard, monitor, mouse, sound card). Gershen states at col. 4, lines 52 – 54:

> At step 400, a music expert defines sections of a pre-recorded musical performance and divides them into the ensemble accompaniment Tracks and solo tracks as discussed above. At step 410, that **definitional information** is inputted into the database and recorded on the Compact Disc 150 for end-user use (such as a CD-ROM, or internet server).

The mixing of stored sound tracks which occurs is only storage of "definitional information" and is not the actual mixed sound tracks themselves. It does not appear that Gershen ever actually records in any directly readable tangible form the actual mixed sound track itself. If such a mixed track is ever made, it is stored in such form only by the end user, not be Gershen's system.

Claims 3 - 6, 9, 11 - 16, 19, 21, 22, 25, and 27 – 32 depend variously directly or indirectly on claims 1, 2, 17, or 18 and are allowable therewith, and for such further limitations as set forth in the claims.

Applicant respectfully requests advancement of the claims to allowance.

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Signature

6/28/06

June 28, 2006

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